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Technology Center 2100

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In re Application of: )  
Aravind SITARAMAN et al. )  
Application No. 09/734,952 ) **DECISION ON PETITION**  
Filed: December 11, 2000 ) **UNDER 37 CFR § 1.181**  
For: PREVENTING HTTP SERVER )  
ATTACHS )

This is a decision on the petition, filed on 03 October 2006, under 37 C.F.R. § 1.181 to request acceptance of the Pre-Appeal Brief Request for Review filed on 14 April 2006.

The petition is **DENIED**.

In support of the petition, petitioner asserts that nowhere does the "New Pre-Appeal Brief Conference Pilot Program" (hereinafter "Pre-Appeal Conference Program") indicate that the arguments already of record are to be included in the five-page total for the Request and the Pre-Appeal Conference Program, on the contrary, encourages references in the Request to arguments already of record. Thus, petitioner is requesting (1) withdraw the Notice of Panel Decision from Pre-Appeal Brief Review; (2) enter the Pre-Appeal Brief Request filed 04 April 2006 as timely filed; and (3) issue a new Notice of Panel Decision from Pre-Appeal Brief Review that addresses the merits of the Request.

The relevant portions of the "New Pre-Appeal Brief Conference Pilot Program", OG Notices, July 12, 2005 are reproduced below:

"For example, the request should concisely point out that a limitation is not met by a reference or the examiner failed to show proper motivation for making a modification in an obviousness rejection (35 U.S.C. 103). Applicants are encouraged to refer to arguments already of record rather than repeating them in the request. This may be done by simply referring to a prior submission by paper number and the relevant portions thereof (e.g., see a paper number 3 at pages 4-6). **However, references such a "see the arguments of record" or "see paper number X" are not helpful and will just obfuscate the real issues for review.**" [Emphasis added.]

**" Panel decisions will not be petitionable because a decision to maintain a rejection is subject to appeal. A pre-appeal brief conference panel decision that the application remains under appeal is not final agency action for purposes of court review. An**

**applicant dissatisfied with the result of the appeal conference must pursue the appeal before the Board of Patent Appeals and Interferences” [Emphasis added.]**

The relevant portion of 37 CFR 1.181(f) states:

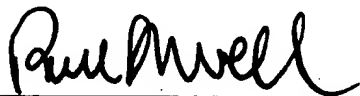
The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

Pursuant to the “Pre-Appeal Conference Program” Notice supra, the Notice of Panel Decision dated 19 June 2006 is not petitionable and reviewable under 37 CFR 1.181. Further, the petition filed 03 October 2006 is not filed within two months from the mailing date of the Notice of Panel Decision. Pursuant to 37 CFR 1.181(f), the petition must be held untimely and should not be considered by the Technology Center Director.

A review of the application history indicates that the Pre-Appeal Brief Request for Review filed on 17 April 2006 was referring to the entire remark section (pages 11-25) of amendment filed 22 August 2005. This reference was amounted to “see the arguments of record”, and the 22 August 2005 amendment was responsive to the non-final Office action mailed on 11 July 2005. In fact, a Notice of Appeal filed 17 April 2006 was intended to appeal from the final Office Action of the examiner. Thus, the reference such as “see the arguments of record” was not helpful, and the referring to the arguments in responding to the non-final Office action rather than a response to the final Office action would obfuscate the real issues for review.

For the above stated reasons, the petition is **DENIED**. The Notice of Panel Decision from Pre-Appeal Brief Review will not be withdrawn, and the application remains under appeal.

Any inquiry concerning this decision should be directed to Vincent N. Trans whose telephone number is (571) 272-3613



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